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March 24, 2016

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ***Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42; *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket 09-197; *Connect America Fund*, WC Docket No. 10-90; Ex *Parte* Notification**

Dear Ms. Dortch:

This *ex parte* letter is filed on behalf of Budget PrePay, Inc. ("Budget PrePay") in response to Chairman Wheeler and Commissioner Clyburn's Fact Sheet proposals to modernize the Lifeline program, released on March 8, 2016. Budget PrePay is one of the largest mobile wireless carrier participants in the federal Lifeline program.

Budget PrePay has always supported transitioning the Lifeline program to broadband and voice services, so long as low-income consumers are given the choice as to how they want to use their monthly Lifeline benefits. However, rather than empowering Lifeline customers, the Fact Sheet proposals will serve to limit choices for Lifeline customers and, if adopted, will soon force those with the lowest household incomes to pay a portion of their monthly Lifeline service, or risk losing Lifeline service altogether. The real impact of the Fact Sheet proposals will be to soon require all Lifeline customers to pay a minimum of $10.00-$15.00 per month, or more, for mobile wireless service.

The unfortunate impact of the reform proposals will be to take away from Lifeline customers the ability to receive mobile wireless service at no cost. Once Lifeline beneficiaries are forced to pay a portion of their Lifeline service, many will simply choose to terminate their service. If adopted without modification, the end result of the reform proposals will almost certainly be fewer low-income consumers choosing to use their Lifeline benefits since doing so will require a substantial co-pay, unaffordable for many Lifeline beneficiaries.

The Commission should initially establish a minimum service requirement to offer standalone voice service of at least 400 minutes (with unlimited texts) and a standalone data service of at least 300 MB (with unlimited texts) with the federal Lifeline subsidy remaining at $9.25 per month. Alternatively, for a $9.25 per month Lifeline subsidy, the Commission could consider a slightly higher level of monthly voice minutes (*e.g.*, 500 minutes) and a slightly lower level of data service (*e.g.*, 250 MB), or vice versa. Then, as discussed in more detail below, the Commisison should commit to revisit the matter by assessing market conditions.

Under the Fact Sheet proposals, only mobile wireless carriers – not fixed wireless or wireline carriers – will be required to offer unlimited voice service, beginning December 1, 2016. This technology-biased mandate – one that clearly violates the FCC's long-established principle of competitive and technological neutrality – is supported by claims that unlimited plans are "typical" in the mobile wireless market. While unlimited voice service is certainly available nationwide, it usually requires the customer to pay a significant monthly fee – usually $19.00-$25.00 or more.[1] Unlimited voice plans are not "typical" in the no-cost Lifeline market segment.

In fact, the only places where a customer can obtain unlimited, mobile wireless Lifeline offerings are in areas where additional state and/or federal Lifeline subsidies are available, such as California which provides additional, recurring state Lifeline subsidies exceeding $13.00 per month, as well as non-recurring, state Lifeline service connection subsidies of $39.00 to qualified consumers, or in federally-recognized Tribal Lands where an additional $25.00 of federal, Tribal Lifeline support is available to qualified Tribal residents. The Commission would be hard-pressed to find other places in this country where unlimited voice minutes are available to Lifeline customers at no cost with only the federal $9.25 monthly subsidy available.

There is a reason for this. It is simply not economically possible for a mobile wireless carrier today to provide unlimited voice minutes to Lifeline customers at no cost, as well as provide the same customer with a free handset or smartphone when the monthly, federal Lifeline subsidy is only $9.25. And, of course, a carrier's costs are not limited to the costs of providing unlimited voice minutes and a device. Lifeline providers also have employee costs, vendor costs, advertising/marketing costs and compliance costs – all of which must be covered within the $9.25 subsidy. In light of the fact that the competitive market rate for unlimited voice service is $19.00 or more per month, Lifeline providers cannot be expected to offer unlimited voice service for only a $9.25 subsidy, not without requiring a significant co-pay from Lifeline customers.

The Commission proposes to eliminate voice-only subsidies altogether by 2019. To make matters worse, mobile wireless Lifeline providers will also be required to include 3G data services, beginning with 500 MB of data per month on December 1, 2016, and ultimately increasing to 2 GB monthly by the end of 2018.[2] With no rationale yet provided, the Fact Sheet

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[1] For example, both Ultra Mobile and Lycamobile are offering unlimited domestic voice and text messaging plans and unlimited calls and texts to some international countries for $19.00 per month. However, neither carrier provides devices at no-cost to their customers. *See* http://www.lycamobile.us/en/national-plans or http://ultra.me/plan/19.

[2] Current competitive market offerings provide objective data regarding the cost to consumers of such service. For example, Cricket Wireless offers 2.5 GB of data, unlimited calling and unlimited text for $40.00 per month, plus the cost a smartphone. *See* https://www.cricketwireless.com/cell-phone-plans. Assuming a subsidy of $9.25, a Lifeline

proposals keep federal Lifeline support available, in full, for fixed-only voice service, while eliminating it for mobile service.

So, even though the vast majority of Lifeline customers have chosen for the last decade to use their Lifeline benefit for standalone, mobile voice service – even while standalone and bundled broadband, voice and text messaging options have been offered by many ETCs, including Budget PrePay, the reform proposals would remove from Lifeline the very standalone voice option preferred by the vast majority of Lifeline customers. The reform proposals would deny Lifeline customers the option of subscribing to fully-subsidized, standalone mobile voice service. Instead, if standalone voice service is what a Lifeline customer wants – and many Lifeline customers (*e.g.*, senior citizens) really only want voice service and a simple wireless handset – low-income consumers will now only be able to get fully-subsidized voice service at home from a fixed provider. No longer will low-income consumers be able to get it from their much preferred, mobile wireless carrier.

Earlier this week, the Chiefs of the Wireline Competition Bureau and the Wireless Telecommunications Bureau issued a blog post asserting that the Fact Sheet proposals provide Lifeline providers "plenty of time to adjust their business models."[3] That might be true if the proposal required only a minor tweak to the business plans of Lifeline providers, but the proposed reforms will force most, if not all, ETCs to completely restructure their businesses, stranding hundreds of thousands, if not millions, of Lifeline customers, causing thousands of workers to lose their jobs in this market segment and likely forcing numerous Lifeline-focused providers out-of-business. Nowhere are these unfortunate outcomes mentioned in the blog post, nor is any guidance provided as to what customers should do if their ETC decides to terminate operations as a result of the planned reforms.

For those ETCs, like Budget PrePay, that are willing to try operating under these new Lifeline rules, a mere eight months is not nearly enough time in which to try to renegotiate underlying resale agreements with their facilities-based carriers (or their preferred MVNEs), other vendor contracts fundamental to their day-to-day business, as well as bank or other lending agreements. Further, ETCs will need to implement systems for accepting monthly payments, often from customers who do not have credit or debit cards, or checking accounts.

To date, the Commission has provided no analysis as to how the nation's most vulnerable citizens – those currently receiving Lifeline benefits – will be able to meet the financial burden of having to pay for a significant portion of their Lifeline service, or risk losing their Lifeline service altogether. In their joint blog post, the two Bureau Chiefs stated that the proposed reforms allow "ample time for customers" to prepare for this still unacknowledged, "skin-in-the-

customer would have to pay $30.75 out-of-pocket per month to subscribe to this plan in addition to device costs. This is the least expensive data plan offered by Cricket Wireless.

[3] *See Lifeline: Striking the Right Balance*, Jon Wilkins, Chief, Wireless Telecommunications Bureau and Matt DelNero, Chief, Wireline Competition Bureau, FCC Blog, Mar. 21, 2016 (available at https://www.fcc.gov/news-events/blog/2016/03/21/lifeline-striking-right-balance).

game" Lifeline transition – a transition that will, by their own admission, force Lifeline customers to pay at least "a few dollars per month for a device,"[4] and significantly more for unlimited voice and broadband service to actually work on these devices. As demonstrated above, the payment burden will likely be much higher than "a few dollars per month."

The joint blog post is in sharp contrast to the concerns expressed by public interest groups. The joint blog post asserts, without evidence, that future Lifeline service under the reformed Lifeline program will create "a very affordable mobile data choice for a Lifeline consumer."[5] In contrast, a well-regarded consortium of public interest advocacy groups who focus on protecting the interests of consumers, including Public Knowledge, the Benton Foundation and the Leadership Conference of Civil and Human Rights, recently indicated to the Commission that "[e]liminating no-cost Lifeline support for standalone mobile voice would harm people who cannot afford to pay out of pocket for communications services or do not have access to banking services."[6]

Under the reform proposals, those who qualify for Lifeline will soon be asked to pay $10.00 or more, out-of-pocket, every month, for services that for nearly a decade have been provided at no cost. This is wholly inconsistent with the unsupported claim in the joint blog post that this is "very affordable… for a Lifeline customer."[7]

Commissioners Pai and O'Rielly have both recently pointed out that recent increases to the USF contribution factor are heavy financial burdens on American families, not just low-income families.[8] Yet, Chairman Wheeler estimated that the USF contribution made by American consumers would only grow by approximately $0.16 per month for a telephone line as a result of the Commission's decision to increase the size of the USF by approximately $1.5 billion, as part of the agency's recent expansion of the E-Rate program.[9] In contrast, the proposed reforms would directly and most dramatically affect the nation's poor – with costs to those receiving Lifeline benefits likely to exceed, at a minimum, $10.00 per month or more, per household.

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[4] *Id.* at 2.

[5] *Id.*

[6] *See* Letter from Dallas Harris, Policy Fellow, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 11-42, 09-197, 10-90 (Mar. 8, 2016), at 2.

[7] *Lifeline: Striking the Right Balance*, at 2.

[8] *See Modernizing the E-Rate Program for Schools and Libraries,* Second Report and Order and Order on Reconsideration, Dissenting Statements of Commissioner Ajit Pai and Michael O'Rielly, 29 FCC Rcd. 15538, 15635 & 15641 (2014) ("*E-Rate Modernization Order*") (with Commissioner Pai noting that a 17.2% telephone tax increase for American families is quite a burden for families that are "still struggling to make ends meet in this lackluster economy.").

[9] *See E-Rate Modernization Order*, Statement of Chairman Wheeler, 29 FCC Rcd. at 15629.

These statements appear to reflect a significant disconnect as to what is – and what is not – a financial burden for most Americans, and in particularly for low-income Americans. In the instant matter of Lifeline reform, the nation's most economically vulnerable residents will be hardest hit by this financial burden.

To be clear, Budget PrePay supports the Commission's objective of transitioning the Lifeline program to support broadband services, but the proposed path appears aspirational, not based upon what most low-income consumers want or can afford.

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So what should the Commission do?

The Commission should initially establish a minimum service requirement to offer standalone voice service of at least 400 minutes (with unlimited texts) and a standalone data service of at least 300 MB (with unlimited texts) with the federal Lifeline subsidy remaining at $9.25 per month. Alternatively, for a $9.25 per month Lifeline subsidy, the Commission could consider a slightly higher level of monthly voice minutes (*e.g.,* 500 minutes) and a slightly lower level of data service (*e.g.,* 250 MB), or vice versa. However, the proposal to jump to unlimited voice minutes as of December 1, 2016 and to quadruple minimum data requirements in just two years is not reasonable or economically justifiable.

Budget PrePay supports the Commission conducting an annual or biennial review of wholesale pricing to, among other things, examine whether market competition is reducing wholesale costs for both voice and broadband service. If the results of the Commission's recurring analysis demonstrates that wholesale costs for both voice and broadband service are decreasing, then the Commission may be able to reasonably justify increasing minimum Lifeline service standards.

Budget PrePay also supports the Commission requiring ETCs to offer additional standalone and bundled minimum service level plans with a well-reasoned number of voice minutes, texts and data usage, but any such plans would almost certainly only be offered at a cost to Lifeline customers – and there are additional, payment complications created by a "skin-in-the-game" approach to Lifeline that have yet to be explored or even acknowledged. For example, how does the Commission envision ETCs accepting payment in a pay-for-Lifeline dynamic when many of these customers do not have credit or debit cards or checking accounts, or when the carrier-customer relationship is exclusively virtual?

Any new minimum Lifeline service requirements should not go into effect any earlier than one year from the effective date of any new Lifeline rules adopted by the FCC or until the third-party eligibility verifier database is functional, whichever is later, as opposed to the proposed transition date of December 1, 2016. Customers and carriers need adequate time to prepare for the changes being considered and eight months is not sufficient.

In addition, Budget agrees with Sprint that the Commission should grandfather the $9.25 subsidy levels provided to existing Lifeline subscribers through 2019.[10] This grandfathered status should be made available to all Lifeline customers as of the effective date of the Commission's ruling. Grandfathering empowers Lifeline customers. Rather than dictating an outcome and forcing the vast majority of Lifeline customers to have to pay out-of-pocket for Lifeline service, grandfathering gives the Lifeline customer the choice to use their $9.25 subsidy however they wish. For example, the grandfathered Lifeline customer could choose to remain on their same, no-cost Lifeline service plan or switch to a different Lifeline plan and/or provider, while still remaining eligible for the $9.25 subsidy. The FCC should also ensure that 90-day advance notice is provided to all Lifeline customers of the grandfathering option.

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The Fact Sheet proposals appear to be an overreaction to a perceived state of the Lifeline program and the kinds of service plan options currently available to Lifeline customers by Chairman Wheeler and Commissioner Clyburn that is inaccurate. The fact is that the average allowance of monthly voice minutes, text messages and data has increased significantly in recent years. Many mobile wireless ETCs, including Budget PrePay, are now offering 500 voice minutes and 500 text messages as an introduction to new Lifeline customers for 3-4 months, and 350 voice minutes and 350 text messages per month thereafter, at no cost to the Lifeline customer. Where additional state or federal Lifeline subsidies are available, ETCs are offering significantly more voice minutes, unlimited text messaging and data allowances.

Mobile wireless ETCs, including Budget PrePay, are also offering and have offered for at least 1-2 years, Android smartphones that are Wi-Fi-enabled. Budget offers Wi-Fi handsets to all of its new Lifeline customers and believes that mobile wireless Wi-Fi functionality is critical to the future success of the Lifeline program's transition to primarily support broadband services.

These are all remarkable improvements from what was available to Lifeline customers just a couple of years ago, despite the Commission's decision less than four years ago to significantly reduce federal Lifeline subsidies from $13.50 per month to $9.25.

Further reform of the Lifeline program must be sensible and well-supported, based in large part on the costs incurred by ETCs in providing Lifeline service, as well as

[10] *See* Letter from Norina T. Moy, Sprint to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 09-197, 11-42, 10-90 (Mar. 14, 2016), at 2.

reasonable expectations of what a modest $9.25 monthly Lifeline subsidy can actually provide. Unfortunately, many of the proposals are unrealistic, unsupportable and unworkable based upon current market dynamics and, if adopted, would place many of our nation's most vulnerable citizens at risk of losing their Lifeline service altogether, thereby unnecessarily limiting their access to emergency services, health care, new employment opportunities and loved ones.

Please do not hesitate to contact me if you have any questions.

Respectfully submitted,

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